



• PRESS •

TRUSTEES NEED TO TAKE A CLOSER LOOK AT FIDELITY COVER

WHAT IS PADDOCKS PRESS?

A **free** digital newsletter published to educate and update the sectional title community.

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By Mike Addison

Recently, the question of fidelity cover has arisen on the STO website and others. Here follows more or less what our

thinking is in terms of insuring the body corporate in terms of PMR 29(2)(b). In a nutshell, trustees are supposed to see to it that the body corporate has fidelity cover, a sum, if any, to be determined by the body corporate at a general meeting. In other words, it should be decided at an AGM how much cover is needed for Fidelity.

Fidelity Cover is additional cover against the loss of money or property stolen by an em-

ployee. Thus, if you have a specifically designed sectional title policy, you may automatically be provided with say R20,000 or R50,000 cover – this essentially covers the body corporate should a trustee or employee be found to have stolen money and/or other property belonging to the insured or for which they are responsible.

Under normal circumstances, the managing agent is NOT considered to be an employee.

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BUYING INTO SECTIONAL TITLE — WHAT YOU DON'T KNOW CAN HURT YOU!

While many Paddocks Press readers are well informed on sectional title matters, others are dealing with this form of ownership for the first time. This article deals with the basics of buying into sectional title and is perfect for first-time sectional title buyers as well as the clients of some of our advanced readers

The rise in popularity of sectional title ownership over the last two decades is a testament to the fact that sectional title ownership is fast becoming the

preferred home ownership option for both resident owners and buy-to-let investors. Modern lifestyle demands the ability to enjoy the benefits of facilities such as good security, gymnasiums, communal pools and the like. However, individual ownership of these benefits proves costly both in terms of time and money due to the corresponding maintenance obligations attached to such amenities. In sectional title ownership, these benefits can be enjoyed whilst the maintenance and financing

of such amenities is shared by all owners of the scheme.

Despite its advantages, sectional title ownership is notoriously considered more complex than conventional title ownership and for good reason... Buying into a sectional title scheme is a commitment by the new owner to form part of a community which is governed by legislation and rules and which has financial and administrative obligations which must be met. As an investor it ...to page 4



Jennifer Paddock

TRUSTEES NEED TO TAKE CLOSER LOOK AT FIDELITY COVER ... continued

from page 1...

Here's the interesting part:

If the body corporate funds are held / managed via the managing agent's trust account then such funds ARE covered by the Estate Agents Affairs Board Fidelity Fund.

If the funds are held in the body corporate's own bank account and the trustees sign such cheques i.e. control their own funds, then the body corporate should or may need to purchase additional fidelity cover. This can be expensive though, in my view. R100,000 costs approximately R2,500 per annum (2.5%).

If the funds are NOT held in trust, then the Estate Agents Affairs Board (EAAB) does not cover - see EAAB website for more detail. The EAAB Fidelity fund will apparently still cover losses where managing agents are NOT registered as long as the money was held in trust or supposedly held in trust. This is busy being tested – we as insurance advisors, the affected bodies corporate and NAMA are watching this with keen interest after a recent debacle where a Cape Town Managing Agent went into liquidation and its affairs are being wrapped up.

The difficult one is where the Managing Agent and the trustees jointly sign - here it is difficult to say who is controlling the money. What if both a trustee and a Managing Agent together collude

and run off with the money? We are suggesting covering all bases under these circumstances and that will include suggesting to the Managing Agent that they themselves take additional FG cover via their own commercial policies i.e. over and above. Also take the aforementioned.

Just to add a further cat among the pigeons, we are now also strongly recommending Professional Indemnity cover for Managing Agents although this is nowhere stipulated as a requirement. This further protects the body corporate clients. The same case I mentioned - such cover could certainly have helped - depends on outcome though. If it is found that accounting error causes a loss rather than dishonesty, professional indemnity policy rather than Fidelity cover is what should respond.

Dr Jooste, chairperson of the National Association of Managing Agents (NAMA) recently wrote an article for Paddocks Press, in which he deals with the trust account aspects according to the Estate Agents Affairs Act. Of course, there are some areas that need to be clarified and made clearer for the many untrained trustees out there. There is in fact more to it than that. The dynamics of the body corporate, the relationship and experience of the Managing Agent, the Managing Agent's internal systems, checks and balances should all be considered.

Some suggestions:

Get yourself a Managing Agent who is registered with the EAAB or can show that they have applied for registration particularly if your money is held in trust

Support managing agents who are members of the National Association of Managing Agents (NAMA).

Check your body corporate management rules and make sure whether or not there is a specific rule amendment in this regard

Check bank account system and insure accordingly – if own bank account for example, refer to general meeting and insure according to decision taken

Definitely obtain written advice from your insurance broker/advisor in this regard referring to PMR 29 2 (b) in particular – this is an insurance need where advice is required. ■

“Managing Agents who are NAMA members and have passed the UCT Sectional Title Scheme Management course are considered a lower risk by certain underwriting managers” - Mike Addison

NEW SECTIONAL TITLE PROPERTY DEVELOPMENT COURSE

The University of Cape Town Construction Economics and Management Department together with Paddocks presents the **UCT Sectional Title Development Course.**



Paddocks

The Course in a Nutshell:

- 3 - day intensive workshop presented at the Kelvin Grove Club, Newlands, Cape Town
- Focuses on the legal and financial aspects of sectional title property development
- Compiled and presented by sectional title expert, Prof. Graham Paddock
- Includes presentations by specialist sectional title Accountant, Clint Riddin

**NEW
3-DAY COURSE**

Who should attend?

Anyone who wishes to practice as, or be a service provider to a developer of sectional title schemes, including property developers, project managers, managing agents, estate agents, attorneys, architects, land surveyors, accountants, builders, property development financiers, investors and home owners throughout South Africa.

Course Dates:

Monday 6th of October, Tuesday 7th of October and Wednesday 8th of October 2008

Registrations Close:

26th of September 2008

Course Venue:

Kelvin Grove Club in Newlands, Cape Town

For more Information:

Please call Christina on 021 674 7818 or email christina@paddocks.co.za.

What does the course cover?

- Definition of the Developer
- Pre-sales Activities
- The Sectional Plan
- Future Development rights
- Scheme Rules
- Scheme Contracts
- Tenant's pre-emptive rights
- Approval of the sectional plan & opening of the register
- Transfers / cessions of rights
- Handover to Body Corporate
- Interim Bookkeeping

BUYING INTO SECTIONAL TITLE — WHAT YOU DON'T KNOW CAN HURT YOU!...continued

from page 1...is important for you to know exactly what you are buying, what your management obligations will be, what costs you will be responsible for after transfer and what rules you will be bound by before putting pen to paper. In sectional title ownership, ignorance is not bliss because what you don't know can hurt you. So read on before you sign a sectional title deed of sale...

What exactly are you buying?

You will often hear people speaking of buying a "flat", an "apartment" or a "townhouse" when referring to what they buy in sectional title schemes, yet technically all of these terms do not describe what they are in fact buying. When you buy into a sectional title scheme you are buying a composite thing called a "unit". A unit consists of a section together with a share in the common property. A section is an area which you own exclusively (such as a townhouse or apartment) to the median line of the walls, floors and ceilings. The common property is an area which you will co-own with all other section owners and includes all areas of the scheme which are not included in the sections such as driveways, entrance foyers, stairs, lifts, gardens, swimming pools and so on.

As a buyer, you may also benefit from exclusive use rights allocated to your section which allow you to use a portion of the common property to the exclusion of all other owners, for example a parking bay. Exclusive use rights may be allocated to a section by either being formally registered on the sectional plans of the scheme (in terms of

section 27 of the Sectional Titles Act 95 of 1986 "the Act") or more informally by passing a rule which gives the owner of a section the right to use such an area (in terms of section 27A of the Act). If you have been allocated exclusive use rights in terms of section 27 or section 27A it is important to understand that although you have the right to use an area of the common property exclusively, that does not mean that you exclusively own that area. It remains part of the common property and is therefore still owned by all the owners of sections, however no other owner has the right to use it besides you.

Before signing a sectional title deed of sale it is important for you to obtain and analyse a copy of the registered sectional plan of the scheme. Ask yourself the following questions: is the extent of the section described in the deed of sale the same extent shown on the sectional plan? Are any and all exclusive use areas allocated to me in the deed of sale allocated to the section which I am buying on the sectional plan? Asking these questions will help to prevent the all too often experienced headache when a unit owner finds out after transfer has taken place that what he thought he was buying (in terms of his deed of sale) is not in fact allocated to him on the registered sectional plan. Ask the estate agent, managing agent or seller for a copy of the registered sectional plan, alternatively find the sectional plan you are looking for on Sectional Titles Online(www.sto.co.za).

Your participation in the management

of the scheme

Buying a unit in a sectional title scheme comes with automatic membership to the governing body of the scheme, called the 'body corporate'. Membership is mandatory so even if you are a buy-to-let owner you, as owner, are the member of the body corporate and not your tenant. The body corporate is an association of owners which exists to run the scheme from a financial and administrative point of view and maintain the common property. Owners elect a board of trustees to carry out the body corporate obligations at every Annual General Meeting ("AGM") and in many schemes the trustees contract with a managing agent to assist them in this regard.

What costs will you be responsible for?

All costs related to your section, which you own exclusively, are for your own account. Remember that you only own your section to the median line of its floors, walls and ceilings and therefore the foundations, 'outer-skin' and roof of the building are common property and are therefore not your exclusive financial responsibility. All costs related to the common property, which is co-owned by all owners, as well as all payments for the general running of the scheme are paid by the body corporate from its levy fund. These costs include insurance of the buildings to their full replacement value, maintenance and repair of the common property, wages of staff employed by the body corporate and so on. The body corporate estimates its expected expenditure each year, takes this ...to page 5

BUYING INTO SECTIONAL TITLE — WHAT YOU DON'T KNOW CAN HURT YOU!...continued

from page 4 ...budget to the AGM for approval and once approved, divides the estimated expenditure between the owners (generally in accordance with each owner's 'participation quota' – a calculation which determines the fraction of each owners contribution in relation to their floor area) to work out each owner's ordinary levy. Each owner is then liable to pay such contribution, generally in monthly instalments.

If a necessary expense arises during the course of the year for which the body corporate did not budget, the trustees are entitled to raise a 'special levy'. The trustees can decide whether the special levy is to be paid in one lump sum or in instalments and owners have no choice but to pay it. Owners whose levies are in arrears will be unable to vote on general resolutions at general meetings and will also be charged interest on these arrear amounts. The trustees are entitled to institute levy collection procedures in the Magistrates Court to recover the outstanding amounts from such owners.

As a prospective buyer, it is vital that you find out not only what ordinary levies you will be responsible for (ask to see a copy of the seller's levy statements) but also to ascertain whether there are any anticipated special levies on the horizon. You can find this out by asking the trustees or the managing agent. You can also inspect the common property carefully to establish if there are any obvious defects which are going to require expensive repairs or maintenance work. A substantial special levy, for example to replace a lift in the building, could have you reaching far deeper into your pockets than you ever expected because once you're an owner you have to pay special levies raised. Do

everything you can to find out about special levies before putting pen to paper and then at least you have the choice of investing despite the risk of extra expense.

Other expenses for your account are rates (which by mid-2008 will be payable directly to Municipalities by all sectional owners), water and electricity (these are sometimes included in your levies depending on whether the scheme has implemented separate water and electricity meters or not), maintenance of geysers serving your section (whether or not they are situated on common property) and contributions towards maintenance of your exclusive use areas.

How do the rules of the scheme restrict the use of your unit?

Every sectional title scheme is governed by the Act but each scheme may have different management and conduct rules which are in place to regulate the way the scheme is run and the way in which the owners and occupiers behave. All owners and occupiers are bound by the scheme's rules so even if you are a buy-to-let investor you are responsible for ensuring that your tenants are aware of the rules (you are obliged to attach a copy of the scheme rules to your written lease agreement) and abide by them. The rules of a scheme can be incredibly restrictive and therefore it is essential that you read and understand the rules before committing to being bound by them when buying into the scheme. If you own pets, check the rules to see if pets are allowed in the scheme – resident-

owners regularly suffer enormous heartache when they buy into a scheme, move in and are given notice that the scheme's rules do not allow pets. Buy-to-let investors likewise may need to ascertain whether short-term letting is restricted as many schemes have rules which do not permit leases of less than three to six months.

Any changes which you wish to make to the common property will need trustee and/or body corporate approval. If you want to place an air conditioning heat exchange unit or a satellite dish outside your section, these first need to be approved by the body corporate. Remember that anything outside of your section is common property and therefore co-owned by all owners of sections so even minor changes to it need prior body corporate approval. If you have an exclusive use balcony area which you wish to enclose, you cannot simply get approval of your building plans by the local authority and go ahead with the enclosure, you need to get the trustees to sign your building plans before the local authority will approve them. In short, sectional title ownership involves a community aspect which restricts an owner's use far more than conventional title. In sectional title your interests are not the only interests that are to be considered and the body corporate constitutes an additional layer of governance to which conventional title is not subject.

You may get a copy of the rules from the estate agent, the managing agent, the seller or your local Deeds Registry. Check them to see if there are any rules which you are not happy to abide by. It must be noted that ...to page 6

BUYING INTO SECTIONAL TITLE — WHAT YOU DON'T KNOW CAN HURT YOU!...continued

from page 5...rules are not absolute and can be amended, substituted or deleted, but the procedures and levels of agreement amongst owners required to achieve this often make it difficult to do so.

Things to look out for:

The financial status of the body corporate

The body corporate is responsible for maintaining and repairing the common property and if the body corporate is in debt, your investment could suffer dramatically. The financial position of the scheme and any reserve funds can be checked by obtaining a copy of the financial statements adopted at the last AGM of the body corporate— ask the estate agent, seller, trustees or managing agent for a copy of these and inspect them.

Is the scheme subject to future development rights?

If the developer or the body corporate have future development rights to extend the scheme, these rights must be disclosed in every deed of sale for units in that scheme. If you sign a deed of sale and find out afterwards that the developer or body corporate hold future development rights which were not disclosed in your deed of sale, you are entitled to walk away from the contract.

Are you buying off-plan?

It is not unusual to buy a unit in a sectional title scheme before the scheme has been registered or even before the building has been built. If you are buying 'off-plan', as sales of this nature are often called, the latest date of completion must be stipulated in the deed of sale. You should not pay any money

directly to the developer until the certificate of completion has been issued. Money may be held in trust, either by an attorney or an estate agent, on the developer's behalf until the certificate of completion is issued, but the developer is not entitled to receive any consideration until then.

Conclusion

Knowledge is power. If you are buying into sectional title, the more you know about this type of title, the more likely you are to protect your investment. So before you buy, take the time to investigate the scheme fully and once you're a sectional title owner keep your finger on the pulse of the body corporate by attending meetings. Consider becoming a trustee, or even the chairperson so that you are able to maintain control and are not hit with any nasty surprises. ■

UCT ADVANCED SECTIONAL TITLE SCHEME MANAGEMENT COURSE — Topics 7 - 12

The Advanced Sectional Title Scheme Management Course (Topics 7-12) is presented by Paddocks in conjunction with the University of Cape Town, Faculty of Law: Professional Development Project.

This course is presented during the second half of each year.



Paddocks

Course Details:

- Exclusive course for past UCT Sectional Title Scheme Management Students
- Comprise 4 weeks self-study (via the internet) with expert support and a three-day intensive workshop
- Workshop presented in Johannesburg only
- Compiled and presented by sectional title experts, Prof. Graham Paddock and Judith van der Walt.

Topics:

7. Creating and Amending Scheme Rules
8. Controversial Rules
9. The Three Ps: Pets, Parking and Difficult People
10. Scheme Contracts
11. Dealings with Common Property
12. Arbitration under PMR 71

Course dates:

- Registrations close: 26th of September 2008
 Course starts: 6th of October 2008
 Workshop dates: 29th, 30th and 31st of October 2008

Contact:

Christina at on 021 674 7818 or christina@paddocks.co.za.

BACK TO BASICS

BY JUDITH VAN DER WALT

Management, Conduct and House Rules



Judith van der Walt

Every sectional title scheme is governed by a set of rules comprising management and conduct rules. If the developer does not make new rules when opening the sectional title register, the management and conduct rules prescribed by the Sectional Titles Act of 1986 ("the 1986 Act") automatically applies to the scheme. After the opening of the register, the members of the body corporate are entitled to amend the management rules by unanimous resolution and the conduct rules by special resolution. Subject to further procedural requirements imposed by the 1986 Act, the amendments to the management and conduct rules will only come become enforceable once the new rules have been filed in the scheme's register at the Deeds Registry where the register is held.

It is therefore clear that all management and conduct rules have to be filed in the scheme's register before they can be enforced, irrespective of the fact that they have been amended or adopted by unanimous or special resolution. The question now arises: what about house rules? Can the members of the body corporate make house rules?

It is quite a common occurrence to find a management rule (or a "Schedule 1 Rule") applicable to sectional title schemes registered under the provisions of the Sectional Titles Act of 1971 ("the 1971 Act"), empowering the trustees to make house rules. The scope of these house rules is usually limited to rules in connection with the health, safety and cleanliness of the common property. Any house rule which purports to deal with a section for example, is therefore not enforceable but house rules do not have to be filed in the scheme's register at the Deeds Registry to be enforceable.

The rules prescribed in terms of the 1986 Act do not empower the trustees to make house rules. However, there is no prohibition against empowering trustees to make such house rules but such power must be embodied in a new management or conduct rule. If trustees were empowered to make house rules under the 1971 Act, they are still entitled to so irrespective of the fact that the 1986 Act does not allow for it.

In many circumstances, house rules create confusion. The reasoning behind the obligation to file rules in the Deeds Registry is to make the rules freely available to any interested party. On inspection of the register, any interested party will be able to establish immediately what rules apply to the scheme. If trustees are empowered to

make house rules they can adopt new house rules at their trustee meetings as they see fit without informing owners of the new house rules and without taking into account the views of a certain majority of owners.

I do not ever suggest to or encourage trustees to make house rules. I believe that the issues often dealt with in house rules are better dealt with in conduct rules. The process of adopting rules by unanimous and special resolution is more inclusive and transparent and encourages good governance in a sectional title scheme. ■

Judith van der Walt is a consultant at Paddocks. She works together with Prof. Graham Paddock and Jennifer Paddock. Her hourly rate is R900 plus VAT.

SECTIONAL TITLE SURVIVAL MANUAL REVIEW

Review by Brian Joss, news editor, Cape Cape Community Newspapers (CCN); Independent Newspapers (Cape). It appeared in the Southern Suburbs Tatler and other CCN titles (July 3, 2008).

■ Read of the week

Paddocks Sectional Title Survival Manual,
Graham Paddock
Paddocks Publishing
Review: Brian Joss

Most books that deal with complicated subjects are usually filled with jargon that reads like this: ... "To any amount contemplated in sub-section (2), (b), (d) and (c) ... subject to sub-section 7 section 11 a or 52 b applies". And unless you're an accountant you will not understand what it's about.

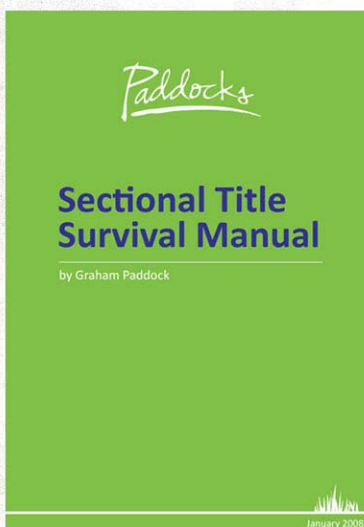
Thankfully, Graham Paddock's survival guide is free of any kind of legalese.

The closest he comes to lawyer talk is when he writes "Section 37 of the Act provides" ... but then Professor Paddock explains clearly what it means and you do not have to grab the nearest dictionary to look up any words you don't understand.

Although this slim survival manual has just 13 chapters, it covers, in detail, everything you ever wanted to know about Sectional Title Schemes but were afraid to ask.

Chapter 1 explains what a sectional title development is and there are sub-sections which deal with, among others, trustees; exclusive use areas; common property and special and unanimous resolutions, among others.

All of them are often the cause of trouble and strife as any trustee will tell you – and that's mainly because the owners don't know what rights they have or, more importantly, they have not read the



Act. Or they have, but don't understand it and that applies to some trustees and managing agents as well.

Other chapters cover residential tenant protection – who qualifies and who doesn't – what happens when you change from shareblock to sectional title and a lot more.

In the other chapters, Paddock discusses rules by which Sectional Title Schemes are controlled and managed.

The rules don't only apply to owners, they also apply to the trustees.

The conduct rules also explain clearly about the keeping of pets, also often the cause of controversy

at a Sectional Title Scheme. A useful addition is the chapter that contains extracts from the Act.

Graham Paddock is one of the country's leading experts on Sectional Title and what he doesn't know would probably fit on the head of a pin.

He is an adjunct professor at UCT's Faculty of Engineering and the Built Environment.

After reading this manual I am convinced that the sectional title industry needs an independent ombudsman who can help resolve disputes, which often cause unnecessary distress and heartache.

The survival guide should be compulsory reading for everyone who runs, owns or lives in a Sectional Title Scheme, and that includes managing agents who would be well advised to keep a copy handy on their desk – to read.

It will probably be the best investment you will make in a long time.

How to order:

1. Obtain an Order Form from Paddocks offices (021 674 7818) or via the Paddocks website.
2. Complete the Order Form and fax your Order Form together with your proof of payment to Paddocks Offices on 021 671 2596. (R265 per book)
3. Your copy of the Sectional Title Survival Manual will be posted to you within 24 hours of receiving your order. *Courier options also available.*

Contact Amy on 021 674 7818 or amy@paddocks.co.za if any queries.

Q & A WITH THE PROFESSOR



By Prof.

Graham Paddock

Converting visitors' bays

Q1. We have visitors parking bays in our complex, but as most tenants and owners have two cars these bays are never available for visitors. Can we change these to permanent parking bays and charge a monthly fee? Would we have to amend our Conduct Rules to this effect?

A1. If, as is usual, the provision of visitor's bays is a town planning requirement, the body corporate cannot give owners exclusive use rights to these bays because it is obliged to maintain a certain number of open bays for genuine visitors.

It may be possible to create additional bays, thus complying with the local authority parking requirements, and exclusive use rights to the additional bays could be auctioned to owners and conferred by way of special resolution.

But if the body corporate must spend money to create the bays, e.g. by converting a part of the garden to a hard surface, installing drainage etc., remember that PMR 33 will apply so the prescribed owner information/participation process will have to be followed.

FFC for a managing agent who does not collect levies?

Q2. A friend has asked me whether he needs a fidelity certificate. He manages a complex but does not play any part in collecting or receiving the levies. The account he manages is in the name of the Body Corporate and not a trust account. He is a member of the EAAB but has been finding difficulty in renewing his certificate as they seem to have administrative problems. He does not have sole signing power of any cheques and these are countersigned.

A2. The activities that cannot be carried out, nor charged for, unless the person doing them has a Fidelity Fund Certificate are receiving and/or collecting levies either from sectional title owners or participants in share block schemes.

If your friend plays no role in the collection or receipt of levies, as seems to be the case here, his (temporary) lack of a FFC is no problem. But he should maintain his status as an estate agent and get the FFC as a matter of course. This may be the only scheme he acts for now, but he may want to act for others and to collect and receipt levies. He should be in the running to provide the full scope of managing agency services.

Fixing broken infrastructure

Q3. In our scheme the existing common property intercom system has not worked for years. A majority of trustees and owners do not live at the scheme

and do not want to spend the money to repair the system. They say it is not essential. For my wife and I this is a serious issue as we need medication delivered, have frequent visitors, and have a maid working for us. The Trustees blythely say "visitors can call you from outside by cellphone". I and other owners have kicked up a fuss and quoted Section 37 of the Act. The Trustees are now kicking for touch saying the AGM next March must decide, clearly anticipating a majority.

My reading of the Act is that the system must be fixed even if every other owner says no. Must I wait another until the next AGM only then launching an arbitration process if the majority say no to fixing it? Or should I start the process now on the basis that there is an obligation to fix it urgently and it is not something which can be escaped from by a decision at the AGM. Would an arbitrator decide I am jumping the gun by not waiting?

A3. You are absolutely correct that the body corporate has a statutory obligation to keep the common property intercom system in working order, particularly if in the budget approved at the last AGM reasonable provision was made for the costs of maintaining the common property.

If the scheme simply does not have the money to fix the intercom system or if a majority of owners at a general meeting have instructed them not to do so, the trustees may be correct ...to page 10

Q & A WITH THE PROFESSOR ...continued

from page 9...in waiting for the next AGM. But it does seem that they are 'kicking for touch'.

Maintenance of cold water pipes inside section

Q4. Who is responsible to maintain the cold water pipes that are exposed between the ceiling boards and the roof tiles before turning down into the walls to feed different taps.

A4. Here are the principles that apply to maintenance of cold water pipes:

1. If the pipe is part of your section (i.e. within the median line) it is your responsibility unless the pipe supplies a number of parts of the scheme, e.g. two sections;
2. If the pipe is outside your section, the body corporate must maintain and repair it, even if it serves only your section.

Interpretation of the proviso to section 4(2) of the Sectional Titles Act.

Q5. I do not understand section 4(2) of the Act. What about different buildings on the non-contiguous pieces of land? Does this mean that you can build a clubhouse, for instance, on a piece of land that is not contiguous to the piece of land that has the dwelling sections on it and still divide the clubhouse into one or more sections and common property?

A5. The proviso to section 4(2) of the Act is a lawyer's dream; making the whole provision capable of different interpretations!

This is how it reads, under the heading "4

Approval of development schemes":

(2) A scheme may relate to more than one building situated, to be erected or being in the process of erection on the same piece of land, or on more than one piece of land, whether contiguous or non-contiguous: Provided that the building or buildings to be divided into sections shall be situated only on one such piece of land or on two or more such contiguous pieces of land registered in the name of the same person and which have been notarially tied.

Interpretation 1 (the official one):

The proviso means that all the buildings in the scheme that are to be divided into sections can only be on one piece of land. So if you don't consolidate the pieces of land prior to opening the register, you can only divide the buildings that are on one of those pieces of land into sections and common property unless you notarially tie the two pieces of land (impose a title condition that they can never be dealt with separately).

In your scenario (which assumes no consolidation of the pieces of land in the scheme) this means that if you want a clubhouse on a separate piece of land in the scheme, which piece of land is not contiguous to others, you can have it shown entirely as common property without a notarial tie. But if you want to have any part of the clubhouse designated a section, you can only do so if the pieces of land are notarially tied.

Interpretation 2 (mine):

If a building in the scheme is built over the boundary between two pieces of land in a scheme, that building can only be divided into sections and common property if the two pieces of land are notarially tied, otherwise the building must be shown as entirely common property on the sectional plan.

In your scenario it would be no problem to have the clubhouse on separate non-contiguous piece of land in the scheme and to have one or more parts of that building shown as sections on the sectional plan, as long as the entire clubhouse building is on one piece of land.

The nub of the ambiguity is the legislature's use of the phrase "the building or buildings to be divided into sections". This phrase can be interpreted either as "all the buildings..." or "any of the buildings...".

I have scratched around and found a request by the Johannesburg Attorneys Association, made shortly before the proviso was inserted, that the issue of buildings built over internal boundary lines be dealt with by way of notarial deed rather than requiring the more lengthy and costly process of consolidation. And that is my recollection of the rationale given for the amendment at the time. So I am fairly sure that this is what was intended. But that is not the way Deeds Registry staff interpret the proviso. Last year Mr. George Tsotetsi, of the Chief Registrar's office, wrote an article in the SA Deeds Journal in which he confirms the official interpretation described above. ■

UPCOMING EVENTS

SEPTEMBER	REGION	DATE
Sectional Title Association of Somerset West - Seminar with Marina Constas	Somerset West , Cape Town	6th September 2008
Addsure and NAMA Managing Agents Insurance Workshop	Bloemfontein	10th September 2008
Addsure and NAMA Managing Agents Insurance Workshop	Randburg, Johannesburg	11th September 2008
Addsure and NAMA Managing Agents Insurance Workshop	Midrand, Johannesburg	19th September 2008
NAMA Trustee Training	Gauteng Central	20th September 2008
OCTOBER	REGION	DATE
UCT/Paddocks Sectional Title Development Course	Cape Town	6th, 7th, 8th October 2008
UCT/Paddocks Advanced Scheme Management Course Starts	South Africa	6th October 2008
Addsure Trustee Insurance Workshop	Cape Town	7th October 2008
Addsure Trustee Insurance Workshop	Cape Town	8th October 2008

Please contact Robyn on 021 674 7818 or robyn@paddocks.co.za for more information regarding the above events or to submit an event.

ABOUT PADDOCKS

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning, Consulting, Development, Publishing, and Software** divisions.

Prof. Graham Paddock is the head of Paddocks, an authority on Sectional Title law and practice and an adjunct Professor at the University of Cape Town. He is the Project Manager and one of the lead consultants to the Department of Housing in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

Learning

Together with the Universities

of Cape Town and Stellenbosch as well as the National Association of Managing Agents and other professional organisations, Paddocks Learning offers several sectional title certificate courses, seminars and conferences.

Consulting

Graham Paddock leads the consulting division and is assisted by Judith van der Walt and Jennifer Paddock. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to vari-

ous levels of central and local government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveyancing services.

Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and pub-

lishes a range of electronic and 'hard copy' sectional title publications by Graham and other authors which make Sectional Title expertise easily accessible to the South African population at large.

Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see

www.paddocks.co.za for more information ■